

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3564 OF 1986

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

THE MEDICAL TECHNICIANS' ASSOCIATION, AHMEDABAD & ORS
VERSUS
THE STATE OF GUJARAT & ORS.

Appearance:

MR RJ OZA for the Petitioners
MR HL JANI for the Respondents

Coram: S.K. Keshote,J
Date of decision:19/6/97

C.A.V. JUDGMENT

#. Heard learned counsel for the parties.

#. The petitioner No.1 is Medical Technicians' Association, Gujarat State (Medical Education, Health & Employees' State Insurance Scheme), Ahmedabad. The petitioner No.2 is the Gujarat State X-Ray & Laboratory Technicians' Association (Health). The petitioner No.3 is an individual employee, and petitioner No.4 is the Medical Technical Association, Gujarat State. This petition has been stated to be filed in representative capacity, under Order 1 Rule 8 of the Civil Procedure Code, 1908. This writ petition is directed challenging the alleged discrimination having been made in the case of Gujarat State X-Ray and Laboratory Technicians' Association (Health) in as much as the medical and Health technicians are granted, (i) special pay of Rs.30/p.m., (ii) free accommodation, (iii) an amount of Rs.120/per year for apron allowance, (iv) washing allowance of Rs.10/- p.m. to the drivers, peons, nursing staff, (v) selection grade etc. So this writ petition has been filed by the petitioners for the aforesaid benefits for the Laboratory Technicians working in the Health branch of the Health and Family Welfare Department of the Government of Gujarat. By amendment in the Special Civil Application, further prayer has been made for direction to the respondents to treat this class of persons in the time scale of Rs.500-900 on parity with the employees of other branches of the same Department.

#. It is not in dispute that the pay scale of X-Ray Technicians and Laboratory Technicians in all the three branches of the Medical and Health Department of the Government of Gujarat, i.e. the Health, Medical and Medical Education, are identical. During the course of arguments, the learned counsel for the petitioners has not pressed the demand of amount of Rs.120/- per year for apron allowance and Rs.10/- p.m. for washing allowance. So, I consider it to be appropriate to take the matter with respect to each demand separately.

#. Claim of special pay of Rs.30/- p.m.

It is not in dispute between the parties that the special pay of Rs.25/- p.m. was resolved to be sanctioned to the Laboratory Technicians (Leprosy). So there is no dispute that except the Laboratory Technicians (Leprosy), none of the other X-Ray technicians or Laboratory Technicians in any other branch of the Medical and Health Department are recipients of special pay. In the Special Civil

Application, claim has been made for Rs.30/- but in the body of Special Civil Application, special pay has been stated to be only of Rs.25/- p.m. so there seems to be some discrepancy. However, after having heard the learned counsel for the parties, I do not find any merits in this claim of the petitioners. In the reply to the Special Civil Application, the respondents have given out explanation why only one class of persons, i.e. Laboratory Technicians (Leprosy), have been extended the benefit of special pay. The Government of India sponsored Leprosy scheme and the Laboratory Technicians working under the said scheme are given special pay of Rs.25/- p.m. The respondents stated as a fact on affidavit that Leprosy is treated as more infectious and contagious disease while other disease like Tuberculosis etc. are considered less infectious disease. So justification for extension of benefits of special pay to this class of persons, namely, Laboratory Technicians (Leprosy), has been given on two counts. Firstly, that these persons are working in a Government of India sponsored scheme wherein a provision is there for special pay and secondly, Leprosy is considered to be more infectious and contiguous disease in comparison to Tuberculosis. As stated earlier, all other X-Ray and Laboratory Technicians are not getting any special pay except this class of persons. So for these special reasons and circumstances, the benefit of special pay has been given to Laboratory Technicians (Leprosy) and on parity the petitioners cannot claim same benefit. If Leprosy is taken to be more infectious and contagious disease and those persons who are serving in connection with this disease and are treating such patients, and for the same they are given special pay, it cannot be said to have caused any hostile discrimination. It is a clear case of reasonable classification having an object sought to be achieved by making the same. This claim of the petitioners is therefore rejected.

#. Claim for rent free quarters:

The learned counsel for the petitioners has failed to give out any justification for this claim. The Government servants are being provided with the Government quarter and reasonable amount is taken as licence fee or rent whatever it may be. All the Government servants are equally placed and in case this claim is accepted for X-ray and Laboratory Technician in Health Department, then all other employees may also equally place their claim. It is not in dispute that all the X-Ray Technicians and Laboratory Technicians in the Medical, Medical education and Health, of Medical Department are equally treated in respect of the

Government accommodation to be give to them. In the Special Civil Application, except making demand for rent free accommodation, no pleading whatsoever has been made to justify this claim. The petitioners have not given out on what basis and grounds they have made this claim. In the Medical branch of the Medical Health Department, there may be cases where free rent accommodation is provided to the persons who are connected with emergency services and not to all the employees. I do not find any justification both on facts and law in respect of the claim made by the petitioners and the same cannot be accepted.

#. Claim of Selection Scale:

The respondent has not disputed that the Government, under its Resolution dated 30th June 1981, sanctioned selection scale to the Laboratory Technicians and X-Ray Technicians in the Medical branch of the Medical Health Department. The Director of the Department has proposed a similar selection scale for technicians in the Health branch. So the Department itself has considered it to be injustice to the technicians in the Health Department. All the technicians are treated at par for all the purposes, i.e. pay scales, allowances, etc. and other service conditions and as such, I fail to see any justification to extend the benefit of selection scale only to technicians in the Medical branch of the Department. After 1.1.1986, the selection scale is not provided but earlier to 1.1.1986, there was a provision of selection scale and many of the technicians in the Medical branch have been given the benefits of selection scale and they continued to retain those benefits. I do not find any nexus or rationality in the order dated 30th June 1981 to extend the benefits of selection scale only to technicians of Medical branch. The technicians of all three branches should have been treated at par and parity should have been maintained in the matter of selection scale also. However, now it is only a question of arrears and fixation of selection scale from the date from which the selection scale was given to the technicians of the Medical branch under the Government Resolution dated 30th June 1981 and consequential fixation of pay of those persons who are found eligible for selection scale in the revised pay scale. It is a clear case of hostile discrimination. The Department itself has taken it to be a case of discrimination and the Director has proposed similar selection scale for technicians in the Health Department but it is really shocking that for all these years, the Government has not decided the same. Not only this, it has, instead of providing justification, felt contended that in the Rules

1987 selection scale has been discontinued. This claim of the petitioners deserves acceptance.

#. Claim of higher pay scale:

The petitioners claim pay scale of Rs.500-900 on the basis of parity to the employees of other branches of Medical and Health Department. The learned counsel for the petitioners contended that in the Tuberculosis Centre, treatment organized has been given pay scale of Rs.500-900. Similarly Medical social workers have been given pay scale of Rs.500-900. This claim has further been based on the ground that any graduate with one year diploma in Library Science is started initially in the time scale of Rs.500-900. The learned counsel for the petitioners contended that technicians having Bachelor of Science with Diploma /Degree in Pathology, Microbiology etc. have been given lesser pay scale in comparison to the persons in other service in the same Department with qualifications of graduate and diploma who are given higher pay scale, which is a clear discrimination. So this claim has been based on the principle of 'equal pay for equal work'. It is a settled law that burden of proof to claim 'equal pay for equal work' heavily lies upon the person claiming parity in the pay. The persons claiming parity in pay should establish that their qualifications, duties and functions are similar to those persons with whom they claim parity. The learned counsel for the petitioners has failed to make out any case for this claim. These posts are altogether different posts and there cannot be any dispute that the nature of duties to be performed by technicians, Medical social workers, Tuberculosis centre treatment organizers and Librarians are altogether different and distinct. Mere fact that qualifications in all the three cases are of graduate with some specialized qualification in the subject concerned, may be diploma, will not justify the claim of the petitioners for the pay scale given to these persons. Three things are to be established, namely, that qualifications, duties and functions are similar. The persons have to possess a specialized qualification in the subject concerned which makes a total difference both in qualifications and duties. So the very basis for this claim is missing from the pleadings. The necessary factual foundation together with cogent evidence in support thereof to establish a claim that the qualifications, duties and functions of the post of technicians on one hand and any other post enumerated above with which parity is claimed are same are missing and as such this claim is not tenable. The net result of the discussion is that the claim of the petitioners for higher pay scale deserves no acceptance.

#. In the result, this writ petition partly succeeds. It is declared that the X-Ray technicians, Laboratory Technicians of the Health Branch of the Medical Department are entitled for special pay at par to the X-Ray technicians and Laboratory Technicians of the Medical branch of the same Department. The respondents No.1 & 2 are directed to undertake exercise of considering the cases of eligiblility of X-Ray Technicians and Laboratory Technicians of Heaalth Branch of the Department for grant of selection scale in accordance with law within three moths from the date of receipt of certified copy of this order. The arrears of fixation should be paid to the persons who are given selection scale within three months next thereafter. The persons found eligible for selection scale shall further be entitled to revision of their pay according to revised pay scale with effect from 1.1.1986 with consequential benefits. The Special Civil Application is accepted only to the aforesaid extent. Rule made absolute in aforesaid terms with no order as to costs.

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